

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Monteith Analyst: Roger Lackey Bill Number: SB 1336

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 04-24-00

Attorney: Patrick Kusiak Sponsor:

SUBJECT: United States Small Business Administration Guaranty Fees Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended April 6, 2000.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 6, 2000, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

This bill would provide a credit equal to:

- the amount paid to the U.S. Small Business Administration (SBA) as a guaranty fee related to obtaining guaranteed financing, plus
- an amount equal to any fees or other costs paid to obtain the SBA loan, but not to exceed \$1,000.

SUMMARY OF AMENDMENT

The April 24, 2000, amendment clarified that the credit would be equal to an amount paid or incurred by the borrower.

The amendment provided that the location criteria of the bill also would apply to the portion of the credit resulting from any fee or other costs paid to the SBA.

In addition, the amendment provided that no deduction would be allowed for the credit amount.

As a result of the April 24, 2000, amendment, the policy concern regarding a possible double benefit has been resolved. In addition, the implementation concern regarding the location criteria for "any fees or other costs" has been resolved. A new implementation concern and the remaining implementation concerns are included below.

Except for the discussion of this analysis, the department's analysis of SB 1336 as amended April 6, 2000, still applies.

Board Position:

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<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> N	<u> </u> OUA	<u> X </u> PENDING

Legislative Director

Date

Johnnie Lou Rosas

4/28/00

Implementation Considerations

While the term "borrower" has been added to the bill, it could be interpreted that the lender qualifies for the credit, as the lender "borrows" the money from the SBA and pays the guaranty fee. The bill should be amended to add definitions for "lender" and "borrower" and clarify that the credit is equal to an amount paid by the lender to the SBA as a guaranty fee, which is passed on to the borrower by the lender as the same fee and amount.

In addition, since guaranty fees paid to the SBA are paid by the lender and it is unclear if the lender passes on those fees as "guaranty fees" or some other type of fee, it is unlikely many borrowers would be allowed to claim the credit for indirect guaranty fees passed on by the lender. This would occur because lender costs, fees, etc., are limited to \$1,000 per year, and the guaranty fees for average SBA loans in California are greater than this amount.

This bill refers to the state average unemployment rate for the 12 months preceding the date the loan proceeds are disbursed and the guaranty fee is paid. It is unclear if the unemployment rate data are available and continuously updated for 12-month periods on a county-by-county basis.

In addition, it seems possible that the loan proceeds could be disbursed in one month and the loan guaranty fee paid in another. Therefore, it would be unclear which month to use for applying the unemployment rate.

Although the term "borrower" has been added to the bill, the credit limitation language in subdivision (b) still refers to a "business." The term "business" should be amended to "borrower" so that it is clear that these parties are the same. In addition, the "total fee paid" language in that subdivision should be amended to "total fees and costs paid" to correspond to the language in subdivision (a).

Once the implementation concerns are resolved, implementing this bill would not significantly impact the department's programs and operations.

BOARD POSITION

Pending.